

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CHARLES DEJUAN MORRIS,

Petitioner,

v.

ISIDORO BACA, *et al.*,

Respondents.

Case No. 3:13-cv-00137-MMD-VPC

ORDER

This is an action initiated by Charles Dejuan Morris, a state prisoner, who has submitted a petition for writ of habeas corpus and an application to proceed in *forma pauperis* (dkt. no. 1). The action was dismissed without prejudice because petitioner had failed to include a financial certificate signed by a properly authorized prison official. Dkt no. 4. Petitioner appealed the dismissal and then moved for a certificate of appealability (COA). Dkt nos. 6 and 8. This Court denied the motion on June 17, 2013. Dkt. no. 9.

On August 27, 2013, the Court of Appeals entered an order construing petitioner's motion for COA as a motion to reconsider the dismissal. Dkt. no. 12. The Court of Appeals determined that petitioner's notice of appeal was "ineffective until entry of the order disposing of the last such motion outstanding." See attachment to Letter to Court, dkt. no. 11.<sup>1</sup>

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<sup>1</sup>The order of the Court of Appeals was not received or docketed before petitioner's letter was received by the Court. It has since been docketed as item number 12.

1 Pursuant to Federal Rules of Civil Procedure 60, a party may obtain relief from  
2 judgment or an order for clerical mistakes or due to mistake, inadvertence, excusable  
3 neglect, or newly discovered evidence. Although a thorough review of the documents  
4 originally submitted by petitioner does not reveal the required financial certificate,  
5 petitioner has included a copy of a certificate with his motion for certificate of  
6 appealability. See dkt. no. 8, exhibit 2. The certificate predates that of the application  
7 to proceed in *forma pauperis*, indicating that it may have been lost or misplaced while in  
8 process, either by petitioner, the prison staff or the clerk's office staff – an inadvertent  
9 act. Therefore, for purposes of judicial economy and fairness, reconsideration of the  
10 matter will be granted. The order of dismissal and the judgment will be vacated. The  
11 application to proceed in *forma pauperis* will be revisited, but denied. Petitioner will be  
12 required to pay the filing fee.

13 It is therefore ordered that the motion for certificate of appealability, construed as  
14 a motion to reconsider (dkt. no. 8), is granted. The order of dismissal (dkt. no. 4) and  
15 the judgment (dkt. no. 5) are vacated. The Clerk is directed to reopen the case file.

16 It is further ordered that the application to proceed in *forma pauperis* (dkt. no. 1),  
17 is denied. The Clerk is directed to send petitioner two (2) copies of this order. Petitioner  
18 will have thirty (30) days from entry of this order to pay the filing fee of \$5. The Clerk is  
19 directed to provide a copy of this order to the Ninth Circuit Court of Appeals.

20 DATED THIS 19<sup>th</sup> day of September 2013.

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24 MIRANDA M. DU  
25 UNITED STATES DISTRICT JUDGE  
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